



## **CASBO/CDIAC's ABC's OF SCHOOL DEBT FINANCING**

*September 21, 2004 (Sacramento)*

*September 28, 2004 (Anaheim)*

### **BASICS OF SCHOOL DEBT FINANCING**

*Presented by*

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#### **I. Introduction – What to get out of this session**

- A. What you need to know
- B. How and why to select professional finance consultants
- C. What to expect from them
- D. Others who can help

#### **II. The Role of the Professionals—Building a Bond Team** (Function, Interaction, and Selection)

- A. Selecting a Bond Team
  - 1. Criteria
  - 2. RFP/Interview
  - 3. Reliance on other Team Members
- B. Team Members
  - 1. Issuer-Borrower
    - a. Borrower
    - b. Conduit Issuer
    - c. Nonprofit Corp. or JPA
  - 2. Bond Counsel
  - 3. Disclosure Counsel
  - 4. Underwriter
  - 5. Financial Advisor
    - a. Pricing Agent
  - 6. Trustee/Fiscal Agent/Paying Agent
  - 7. Credit Enhancement Provider
    - a. Bond Insurer
    - b. Letter of Credit Bank
  - 8. Rating Agency
  - 9. Counsel to above parties
  - 10. County officials; County Superintendent
  - 11. Special consultants/services



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- a. Project professionals: architects, engineers, etc.
  - b. Election campaign consultant, polling consultant, etc.
  - c. Special tax consultant
  - d. Escrow Agent
  - e. Escrow Verification Agent
  - f. Title Company
12. *[Investors]*
- C. Getting the most from your bond team
  1. Appropriate level of Supervision versus reliance

### **III. Methods of Selling Bonds**

- A. Competitive (public sale)
- B. Negotiated (private sale)
- C. Hybrid techniques
- D. Advantages and Disadvantages
  1. out-of-pocket costs, savings
  2. flexibility in timing
  3. flexibility in bond terms
  4. borrowing cost
  5. certainty of outcome
  6. integrity of procedures—level playing field?
  7. other
- E. Which is right for your district's bonds?

### **IV. Basic Financing Documentation**

- A. Overview
  1. Authorization
    - a. Election, if needed
  2. Repayment or Security
  3. Offering and Sale
  4. Delivery or "Closing"
  5. Opinions - "It's all about the bond opinion"
- B. What you need to know
  1. Who prepares, who is responsible
  2. Be a wise consumer of legal (and financial) services
    - a. Take an active hand in your financing.
    - b. Make sure documents express your needs, desires
    - c. Review and make needed changes



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- d. Supervise hired professionals
    - e. Don't be afraid to demand satisfactory explanations
  - 3. Selection of Consultants – What to ask from them
- C. Election Documentation
  - Needed for any tax supported debt (e.g., school bonds, Mello-Roos Bonds)
  - 1. Resolution calling election
    - a. proposition summary
    - b. bond project list
    - c. [tax rate formula]
    - d. direction to elections officer
    - e. any other covenants or limitations
  - 2. Tax Rate Statement (*ad valorem* tax only)
  - 3. Impartial Analysis
  - 4. Other required legal statements
  - 5. Ballot Arguments and Campaign Flyers, etc.
  - 6. *Aside re campaign finance issues – Recent Events*
- D. Authorizing Resolution
  - 1. Recitals: factual background; purposes
  - 2. Financing parameters
  - 3. Approve forms of major legal documents
  - 4. Approve offering and sale documents, procedures
  - 5. Further authorizations, ratification
- E. Security Agreement: Indenture, Trust Agreement, Paying Agent Agreement, Fiscal Agent Agreement, or Resolution
  - 1. Definitions
  - 2. Security; Terms of repayment
  - 3. Terms of early redemption, defeasance
  - 4. Debt Coverage ratio
  - 5. Additional debt test
  - 6. Tax covenants
  - 7. Continuing disclosure
  - 8. Trustee arrangements
  - 9. Amendments
  - 10. Default; remedies
  - 11. Other covenants
- F. Other Security Documents
  - 1. UCC Financing Statements
  - 2. Assignment Agreement
  - 3. Title Policies
  - 4. Appraisals



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- 5. Bond Insurance
  - G. Lease, and Ground Lease in Lease Financing
  - H. Offering/Disclosure documents
    - 1. Preliminary Official Statement
    - 2. 15c2-12 or “deemed final” certificate
    - 3. Official Statement
    - 4. Continuing Disclosure Agreement or Certificate
  - I. Sale Documents (contract)
    - 1. Public Sale
      - a. Official Notice of Sale
      - b. Published Notice
      - c. Certificate of Award
    - 2. Negotiated Sale
      - a. Bond purchase agreement
  - J. Closing Documents
    - 1. Purposes: perspective of issuer, bond counsel, underwriter
    - 2. Evidence of the transaction
      - a. receipts
      - b. signing authority
      - c. “bringdowns”
    - 3. Tax Documents
      - a. Tax Certificate or Non-Arbitrage and Rebate Certificates
      - b. representations and expectations
      - c. covenants
      - d. IRS Form 8038-G
    - 4. Continuing Disclosure Agreement or Certificate
    - 5. THE BOND OPINION
    - 6. Other opinions
  - K. Conclusion
- V. Disclosure in a Bond Transaction**
- A. How do federal securities laws apply to California tax-exempt bonds?
    - 1. Exemption and Application
      - a. Exemption from Registration under Securities Acts
      - b. Application of Fraud Rules: Rule 17b and 10b(5)
    - 2. Why is disclosure important? – Rules and Risks
      - a. Whose duty?
      - b. Underwriter obligations – “Due diligence” defense
      - c. Issuer obligations - Rule 10b(5); Fraud liability



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- d. IRS/SEC regulatory oversight (Orange County)
  - B. Disclosure in the Bond Transaction
    - 1. Roles and Responsibilities of Participants
      - a. Governing Board's role
        - i. Approval of offering document
      - b. Staff's role
        - i. Responsibility for reviewing disclosure
        - ii. "Deemed final" and 10b(5) certifications
      - c. Consultants' Roles
        - i. Physical preparation
        - ii. Responsibility for contents?
    - 2. The Official Statement
      - a. Materiality standard
      - b. Contents – Varies by Transaction
      - c. Fundamental security issues
        - i. Security for the Bonds - Tax and other revenues
        - ii. General fund health
        - iii. Issuer operations, management
        - iv. Investments
      - d. Demographic, State budget, other information
      - e. Role of Rating Agencies
    - 3. Other Statements to the Market
  - C. Continuing Disclosure
    - 1. Basics
    - 2. To be addressed in afternoon session

## **VI. Credit Rating/Credit Enhancement**

- A. The Ratings Process
  - 1. What you need to know
  - 2. Whom to rely on
- B. Bond Ratings
  - 1. Underlying Ratings
  - 2. Insured Ratings
- C. Elements of Credit, generally
  - 1. Debt and Capital Plan
  - 2. Financial Factors
  - 3. Economic Factors
  - 4. Demographic Factors
  - 5. Management



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- 6. Other
- D. The Role of Credit Enhancement
  - 1. Purpose, effect
  - 2. Types
- E. Bond Insurance
- F. Letters of Credit
  - 1. Standby LOC
  - 2. Direct-Pay LOC
- G. Choosing between the Insurance and LOC
- H. Selection of Provider
- I. Cost
  - 1. “Qualified Guarantee Fee”